

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition For Order Declaring South Slope	)	
Incumbent Local Exchange Carrier In	)	WC Docket No. 04-347
Iowa Exchanges Of Oxford, Tiffin, and	)	
Solon	)	

**OPPOSITION OF IOWA TELECOMMUNICATIONS SERVICES, INC.  
(D/B/A IOWA TELECOM)**

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Iowa Telecommunications Services, Inc. (d/b/a Iowa Telecom) (“Iowa Telecom”) hereby submits the following Opposition to South Slope Cooperative Telephone Company, Inc.’s (“South Slope’s”) Petition For Order Declaring South Slope Incumbent Local Exchange Carrier In Iowa Exchanges Of Oxford, Tiffin, and Solon (“Petition”).<sup>1</sup>

**INTRODUCTION AND SUMMARY**

The Telecommunications Act of 1996 (“1996 Act”)<sup>2</sup> included the term “incumbent local exchange carrier” (“ILEC”) to serve as the lynchpin behind the legislation’s market-opening provisions. Under the Communications Act of 1934, as amended (the “Act”), there are two potential types of ILECs for a particular geographic area. The first could be termed a “Section 251(h)(1) ILEC,” a carrier that, as of February 8, 1996, provided local exchange service in the

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<sup>1</sup> South Slope Cooperative Telephone Company, Inc., Petition For Order Declaring South Slope Incumbent Local Exchange Carrier In Iowa Exchanges Of Oxford, Tiffin, and Solon (filed Aug. 24, 2004)(“Petition”). Comment was sought on the Petition in Pleading Cycle Established for Comments on Petition for Order Declaring South Slope Incumbent Local Exchange Carrier in Iowa Exchanges of Oxford, Tiffin, and Solon, WC Docket NO. 04-347, DA 04-2871 (rel. Sept. 3, 2004)(“Notice”).

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 et seq. (“1996 Act”).

area in question and was also a member of the National Exchange Carrier Association (“NECA”) with respect to the geographic area at the time.<sup>3</sup> This definition also includes the successors or assigns of such carriers.

The second type of ILEC, which could be termed a “Section 251(h)(2) ILEC,” is a carrier that the Commission has, through a rulemaking, found it appropriate to treat as an ILEC.

Specifically, the Act provides as follows:

The Commission may, by rule, provide for the treatment of a local exchange carrier (or class or category thereof) as an incumbent local exchange carrier for purposes of this section if –

- (A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a carrier described in paragraph (1);
- (B) such carrier has substantially replaced an incumbent local exchange carrier described in paragraph (1); and
- (C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section.

In the *Local Competition Order*, the Commission stated that it “will not impose incumbent LEC obligations on non-incumbent LECs absent a clear and convincing showing” that the provisions of Section 251(h)(2) were met.<sup>4</sup>

Iowa Telecom’s Opposition focuses on the extent to which any grant of South Slope’s Petition would be “consistent with the public interest, convenience, and necessity and the purposes of [Section 251].”<sup>5</sup> The motivations for a CLEC to seek ILEC status voluntarily (a request that, while perhaps technically appropriate, was justifiably not anticipated by the Commission), particularly for the benefits described by South Slope, are worth detailed

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<sup>3</sup> 47 U.S.C. § 251(h)(1).

<sup>4</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 1248 (1996) (“*Local Competition Order*”) (significant unrelated subsequent history omitted).

<sup>5</sup> 47 U.S.C. § 251(h)(2)(C).

investigation and raise questions relating to the carrier's general regulatory compliance. In addition, as recognized by the Commission in its brief to the U.S. Court of Appeals for the District of Columbia Circuit, a Section 251(h)(2) petition concerning geographic area already served by a Section 251(h)(1) ILEC raises numerous policy questions that must first be resolved, including the immediate and long-term effect of any grant of such a petition on the Section 251(h)(1) ILEC.

**GRANTING THE PETITION, PARTICULARLY AT THIS TIME, WOULD NOT BE  
CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY  
AND THE PURPOSES OF SECTION 251**

Not only is South Slope's public interest benefit analysis incomplete, but it also raises serious questions regarding South Slope's statements in this proceeding and its general regulatory compliance. In addition, the Commission should, at minimum, delay a decision on South Slope's Petition until public interest considerations relating to the implications of granting South Slope's Petition can be resolved.

**I. THE SUPPOSED PUBLIC INTEREST BENEFITS RAISED BY SOUTH SLOPE  
OF GRANTING THE PETITION ARE INCOMPLETE, NOT CONVINCING  
AND, IN FACT, MAY BE SOMEWHAT MISLEADING.**

In its Petition, South Slope makes two potentially relevant arguments concerning the extent to which granting its request would be in the public interest, in addition to statements regarding South Slope's operations irrelevant to its status as an ILEC or CLEC and a somewhat misleading representation of Iowa Utilities Board ("Iowa Board") precedent. Not only are neither of the two potentially relevant arguments persuasive, but they raise more questions than they answer.

**A. Contrary to South Slope's Claim, the Iowa Utilities Board Has Never Found South Slope Serving as an ILEC in the Three Exchanges to Be in the Public Interest, Convenience, and Necessity.**

In the only instance in which Commission has opined on the general requirements of Section 251(h)(2), the Commission stated that it would be “particularly interested” in the comments of the state regulatory commission having jurisdiction over the potential ILEC.<sup>6</sup> The Iowa Board has yet to speak to this issue, and may very well not address this issue in light of its pending proceeding considering the deregulation of Iowa Telecom’s retail local exchange service in, among other places, the Three Exchanges.<sup>7</sup>

Lacking any proof of support by the Iowa Board for its attempt to serve as an ILEC in the Three Exchanges, South Slope instead attempts to bootstrap a relatively perfunctory public interest finding in its CLEC certificate of public convenience and necessity (“CPNC”) proceeding.<sup>8</sup> Nowhere in its Application does South Slope attempt to argue that the Iowa Board considers South Slope to be an ILEC in the Three Exchanges or has ever considered the merits of South Slope serving as such an ILEC.

At present, Iowa Telecom is unquestionably the ILEC in the Three Exchanges under state law (and, of course, given South Slope’s admission by filing the Petition, under federal law). Iowa law uses the term “local exchange carrier” synonymously with what is now commonly known as “incumbent LEC.” Section 476.96(3) of the Iowa Code defines “local exchange carrier” as

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<sup>6</sup> *Local Competition Order*, 11 FCC Rcd at ¶ 1248.

<sup>7</sup> *Deregulation of Local Exchange Services in Competitive Markets*, Docket No. INU-04-1 (Iowa Utils. Bd.).

<sup>8</sup> Petition at 5.

[A]ny person that was the incumbent and historical rate-regulated wireline provider of local exchange services or any successor to such person that provides local exchange services under an authorized certificate of public convenience and necessity within a specific geographic area described in maps filed with and approved by the board as of September 30, 1992.<sup>9</sup>

As the successor to GTE Midwest, Inc., Iowa Telecom has, since acquiring the Iowa operations of GTE Midwest, Inc.,<sup>10</sup> met and continues to meet this definition in the Three Exchanges.

Iowa law does not include a provision similar to Section 251(h) in which the mantle of incumbency can pass from the original incumbent to any entity other than a successor. Therefore, under Iowa law, Iowa Telecom's status as an incumbent LEC in the Oxford, Solon, and Tiffin Exchanges (the "Three Exchanges") cannot be supplanted but can be succeeded only through a sale of the exchanges.

Iowa law does, however, provide for modification of a boundary between adjacent exchanges. South Slope could theoretically achieve the same results through a boundary modification because South Slope is an incumbent in three adjacent exchanges. South Slope would do this by expanding the border of one or more of these exchanges. In other words, the territory currently known as the Oxford, Solon, and Tiffin Exchanges could be assigned to some combination of South Slope's Amana, Fairfax, or North Liberty Exchanges.

Changing incumbent LEC boundaries in Iowa is not a unilateral process, but requires the formal involvement of both carriers sharing the boundary in question. The Iowa Board's rules

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<sup>9</sup> Iowa Code § 476.96(3).

<sup>10</sup> See *GTE Discontinuance of Interstate Services in Iowa and Missouri-Applications Granted, Comments Noted*, Public Notice, DA 00-507 (rel. Mar. 6, 2000).

explicitly prohibit “significant” overlaps in incumbent LEC service territories and provide for a procedure in the case of such significant overlaps, which would certainly include entire exchanges.<sup>11</sup> This procedure ultimately requires either a voluntary joint petition to resolve the overlap or commencement of a contested case proceeding which ultimately ends in an order amending the affected carriers’ certificates and requiring carriers to amend their exchange maps.<sup>12</sup> To date, neither has occurred with respect to the Three Exchanges. If the Iowa Board were to amend the relevant exchange boundaries, Iowa Telecom would, at least initially, be hypothetically precluded from offering service in the affected areas as Iowa Telecom does not currently have fully effectuated CLEC operating authority in any of South Slope’s ILEC exchanges.

An examination of the two Iowa Board orders included in the Application relating to South Slope’s service in the Three Exchanges confirms the fact that the Iowa Board does not consider South Slope to be an incumbent in the geographic area under consideration in this proceeding.<sup>13</sup> Neither is a contested proceeding<sup>14</sup> and neither relates to any voluntary joint filing

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<sup>11</sup> See 199 IAC 22.20(2). The full text of this section is included as Attachment A and is also available at <<http://www.legis.state.ia.us/Rules/Current/iac/gnac/gnac710/gna711.pdf>>. The subsection makes references to a “local exchange utility,” which, in turn, is defined in 199 IAC 22.1(3) as “a telephone utility that provides local service under tariff filed with the board.” “Telephone utility” is defined as “means any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for furnishing communications service to the public for compensation.” While the definition of “local exchange utility” therefore seems to include competitive local exchange carriers, it is clear from the context of 199 IAC 22.20(2) that the Iowa Board’s territory overlap resolution rules concern only incumbent LECs.

<sup>12</sup> See 199 IAC 22.20(2)(c), (e) (pertaining to voluntary petitions) and 199 IAC 22.20(2)(d) pertaining to board order resolving disputes.

<sup>13</sup> See Petition, Attachment (*South Slope Cooperative Telephone Company, Inc.*, Docket No. TCU-98-15, Order Granting Application (Iowa Utils. Bd. July 14, 1998; *South Slope Cooperative Telephone Company, Inc.*, Docket Nos. TCU-99-18, TF-99-176, Certificate No. 0120 (Iowa Utils. Bd. July 8, 1999)).

<sup>14</sup> Iowa Code § 17A.12(1) states, among things, that “[I]n a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice . . .” Neither Iowa Telecom nor its predecessor have received any such notice of opportunity for hearing regarding any modification to the boundary lines of any of the Three Exchanges pertaining to South Slope, or any of its affiliates’, operations.



by South Slope and Iowa Telecom. In addition, the July 14, 1998, Iowa Board order reviews the Iowa statute certification requirements in the context of applicants “other than an Iowa Code § 476.96(5) ‘local exchange carrier.’”

The fact that the Iowa Board considers Iowa Telecom to be the ILEC in the Three Exchanges is further confirmed by inclusion of the Three Exchanges in the Iowa Board’s current proposal to deregulate retail local exchange services in certain Iowa Telecom exchanges.<sup>15</sup> South Slope also appears to admit that Iowa Telecom’s Oxford, Solon, and Tiffin Exchanges continue to exist, evidenced by reference to the same throughout the Petition.

**B. South Slope’s Claims Regarding the Specific Public Interest Benefits of its Applications are Unconvincing and Raise Significant Current and Past Regulatory Compliance Concerns.**

South Slope claims that there are three public interest benefits to granting its application – reduction of administrative burdens pertaining to its NECA reporting requirements; presumably (it is difficult to determine from South Slope’s Petition) increased service quality; and the need to encourage facilities investment, supposedly through the Commission granting applications similar to South Slope’s. In addition, South Slope cites as the only potential negative effect of granting its application an estimated \$25,500 annual increase in its NECA settlements for common line and traffic sensitive costs.<sup>16</sup>

As an ILEC currently operating as an incumbent within three study areas, Iowa Telecom can state with certainty that the administrative burdens of any necessary separate accounting are slight in comparison to the costs of complying with Section 251(c). Further, as an ILEC with a

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<sup>15</sup> *Deregulation of Local Exchange Services in Competitive Markets*, Docket No. INU-04-1, INU-04-1, Order Initiating Proceeding, at 30 (Iowa Utils. Bd. May 7, 2004)(available at <[http://www.state.ia.us/government/com/util/\\_private/Orders/2004/0507\\_inu041.pdf](http://www.state.ia.us/government/com/util/_private/Orders/2004/0507_inu041.pdf)>).

<sup>16</sup> Petition at 7.

CLEC affiliate and also offering numerous deregulated services on an ILEC basis (such as intrastate toll), Iowa Telecom can attest to the advantages of being able to operate even a portion of its business on a non-dominant and non-incumbent basis, even if it requires separate accounting.

To whatever extent South Slope's discussion of service quality is an attempt to argue that its designation as an ILEC will increase service quality in the Three Exchanges, such a claim is spurious. South Slope has not demonstrated in any way how being treated as an ILEC for regulatory purposes, a classification transparent to consumers, will affect the quality of services provided to consumers in the Three Exchanges. Iowa Telecom assumes that South Slope is not attempting to argue that more consumers will receive the benefits of South Slope's supposedly higher relative service quality as a result of any grant of the Petition.<sup>17</sup> If this were not the case, South Slope would be arguing that merely having the label "incumbent" affixed to its regulatory status, South Slope will further increase its already dominant market share – a development that would not be in the public interest.

Regarding incentive for facilities-based investment, South Slope seems to assert that converting from CLEC to ILEC status in an exchange should be some type of reward that CLECs would use as an incentive to invest in competitive facilities. Clearly, however, such a classification only serves as a reward to the extent that it provides financial value to the carrier and is ultimately a meaningless argument unless South Slope can obtain significant tangible benefits to being granted ILEC status.

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<sup>17</sup> Iowa Telecom disagrees with South Slope's assertions regarding the comparative quality of South Slope's and Iowa Telecom's service and, therefore, reserves the right to provide further detail on this issue should the Commission deem it pertinent to this proceeding.

To a casual observer, it seems odd for a carrier currently operating as a CLEC at both the federal and state level to assume willingly the obligations of incumbency – obligations that virtually no ILEC has not sought to reduce both before and after the Telecommunications Act of 1996. In the *Local Competition Order*, the Commission appears to have presumed that a petition filed under Section 251(h)(2) would be filed by a party other than the potential ILEC when it stated that it would entertain requests by “interested parties” and that it would not “impose incumbent LEC obligations on non-incumbent LECs absent a clear and convincing showing” that the provisions of Section 251(h)(2) had been met.<sup>18</sup> The Commission’s use of the term “impose” certainly does not imply an expectation that it would be rational for a CLEC, itself, to seek ILEC status.

Iowa Telecom finds it incredulous that South Slope would voluntarily take on Section 251(c) unbundling obligations, as well as, most likely, the other federal dominant carrier regulation that would most likely ultimately follow from a grant of the instant Application in return merely for \$25,500, annually. Iowa Telecom assumes that this figure represents differences in interstate interexchange access service revenue. No rational CLEC would find this \$25,500, alone (no matter what South Slope purports it to represent), to be sufficient reason to seek incumbent status.<sup>19</sup>

Clearly, there must be more to South Slope’s desire for ILEC classification in the Three Exchanges. One possible motivation is increased universal service revenue. Presently, the only available universal service support in the area is Iowa Telecom’s current \$12.74 per line in

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<sup>18</sup> *Local Competition Order*, 11 FCC Rcd at ¶ 1248.

<sup>19</sup> Given the fact that this \$25,500 figure is the only quantifiable public interest effect presented by South Slope (albeit negative), Iowa Telecom respectfully requests that the Commission either require South Slope to provide detail for this calculation or perform its own independent verification of this figure.

annual Interstate Access Support (“IAS”).<sup>20</sup> Although South Slope does not receive any IAS in its incumbent study area, it currently receives \$42.92 per line in annual Interstate Common Line Support (“ICLS”)<sup>21</sup> and \$30.52 per line in annual Local Switching Support (“LSS”).<sup>22</sup> In its discussion of supposed administrative cost savings if its Application is granted, South Slope admits that the Application is premised on an eventual waiver of the study area boundary freeze.<sup>23</sup> If a waiver were granted, South Slope therefore would be able to receive a net windfall of \$60.70 per year per line in combined ICLS and LSS as compared to what it would have received as an CLEC (being limited to Iowa Telecom’s IAS support). This amounts to \$5.06 per line in net universal service revenue increase per month, which represents over 30 percent of Iowa Telecom’s currently tariffed \$16.60 per month single-line residential rate in the Three Exchanges.

Also, perhaps hoping that the Iowa Board would find inconsistent federal and state classification to be unsustainable, South Slope most likely desires state classification as an ILEC in what are currently the Iowa Telecom Oxford, Solon, and Tiffin Exchanges. As discussed above, this would presumably occur through the Iowa Board conducting a contested proceeding in which the exchange boundary for one or more of South Slope’s ILEC exchanges would be extended to cover the area currently defined by the Three (Iowa Telecom ILEC) Exchanges.

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<sup>20</sup> See Universal Service Administrative Company, 4Q2004 Report to the Federal Communications Commission on the Disbursement of Universal Service Support Program Funds, at App. HC12 (2004)(data for study areas 351167 and 351178 – the two Iowa Telecom study areas that overlap the Three Exchanges).

<sup>21</sup> *Id.* at App. HC09.

<sup>22</sup> *Id.* at App. HC07.

<sup>23</sup> Petition at 7.

South Slope would benefit significantly from such a change – most significantly through the ability to charge significantly higher intrastate interexchange access rates.<sup>24</sup> Further, should the Iowa Board effect the exchange boundary change discussed above to harmonize its regulation of South Slope with that of the Commission (should this Petition be granted), South Slope would also be able to charge a three-cent-per-minute intrastate carrier common line charge unavailable to any CLEC.

Iowa Telecom believes that these intrastate considerations are relevant to the Commission’s public interest determination in this proceeding. South Slope currently finds it profitable to serve customers in the Three Exchanges as a CLEC. The potential substantial increase in its universal service receipts for the affected lines as well as the increase in interstate and intrastate interexchange access receipts would provide a windfall to windfall for South Slope – but at the expense of consumers in Iowa and throughout the U.S. whose carriers must fund this windfall. Further, South Slope’s ability to compete in both the interstate and intrastate markets, already sufficient to win a majority of customers, would be further enhanced inequitably if South Slope were to receive this windfall.

South Slope’s failure to discuss the effect of granting the Petition on South Slope’s federal Universal Service Fund (“USF”) receipts, or its resulting increase in intrastate interexchange access charges, raises serious questions regarding the extent to which South Slope truly is currently separating its operations in the Three Exchanges from its incumbent operations. The three NPA-NXXs used by South Slope to serve the Three Exchanges (one per exchange) are

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<sup>24</sup> South Slope has previously admitted this to the Iowa Board. *See Deregulation of Local Exchange Services in Competitive Markets*, Docket No. INU-04-1 (Iowa Utils. Bd.), tr. 1509 (Aug. 30, 2004)( In weighing the comparative benefits of expanding service territory through CLEC operations as opposed to modification of ILEC exchange boundaries, South Slope’s witness stated that classification as a CLEC “would call into question whether or not they [South Slope] could move forward, and the reason being disparity in the access rates . . . .” *Id.*).

associated in Telcordia's Local Exchange Routing Guide with South Slope's incumbent operation in the North Liberty Exchange.<sup>25</sup> In, fact, South Slope has refused to allow Iowa Telecom to port telephone numbers for South Slope's CLEC customers, clearly a matter of federal jurisdiction under Section 251(b)(2) of the Act, based on the claim that they are part of South Slope's North Liberty incumbent operations.<sup>26</sup> Further, in a recent survey of local competition conducted by the Iowa Board, South Slope reported the entirety of its access lines in the Three Exchanges as incumbent lines associated with the North Liberty Exchange, raising further doubt about South Slope's true accounting and operations practices.<sup>27</sup> Iowa Telecom suggests that the Commission has more than enough justification to investigate in detail South Slope's universal service reporting, numbering, and interstate interexchange access charge practices before providing South Slope what it seeks in this proceeding.

Iowa Telecom has another reason to question whether South Slope is currently separating its ILEC and CLEC operations and complying with applicable federal and state law pertaining to CLEC access charges – a May 4, 2004, memorandum from a South Slope consultant to Iowa Telecom. This memorandum, the authenticity of which has already been asserted by South Slope's Iowa Counsel at an Iowa Board proceeding, states, in pertinent part, as follows:

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<sup>25</sup> According to Local Exchange Routing Guide ("LERG") Table 6, South Slope serves customers in the Three Exchanges using the 319-545, 319-624, and 319-828 NPA-NXXs, which are associated with North Liberty rate center, served by Operator Company Number ("OCN") 1298 (which, according to LERG Table 1, is South Slope). Telcordia, Local Exchange Routing Guide (Oct. 4, 2004).

<sup>26</sup> See Attachment B. Intriguingly, part of South Slope's justification for this was its invalid legal theory that the Board had, in fact, approved a boundary modification and that, therefore, such numbers resided in South Slope's incumbent North Liberty Exchange, in which Iowa Telecom is not certificated to provide CLEC service. See *Deregulation of Local Exchange Services in Competitive Markets*, Docket No. INU-04-1 (Iowa Utils. Bd.), tr. 1359-60 (Aug. 30, 2004).

<sup>27</sup> *Deregulation of Local Exchange Services in Competitive Markets*, Telecommunications Competition Survey for Retail Local Voice Services Response Filed by South Slope Cooperative Telephone Company, Docket No. INU-04-1 (filed with the Iowa Utils. Bd. June 14, 2004), at 4 (although the actual line counts reported on this survey are protected by an Iowa Board confidentiality order, the categorization of such line counts is not).

This memo is to reply to your letter of April 15, 2004, in which you ask that we respond to several specific questions. . . .

Question 3. Whether, or not, South Slope has imposed access charges on both its customers and other carriers pursuant to the state and federal rules that have applied to CLEC's during the period since South Slope began serving customers in Iowa Telecom's Oxford, Solon and Tiffin exchanges to today;

Answer; No<sup>28</sup>

It seems logical to assume that if South Slope is not charging the required CLEC access charges, it must be inappropriately charging higher ILEC access charges. Therefore, it would seem that South Slope has not been separating its ILEC and CLEC operations and has therefore already captured the sole benefit from which its public interest claims flow – not incurring the administrative costs of separating its ILEC and CLEC operations. To this extent, there is no public interest benefit to granting South Slope's petition. Further, South Slope's apparent failure to separate its ILEC and CLEC operations (at least in many regards), raises significant concerns regarding South Slope's past and current compliance with state and federal law concerning whether South Slope has been overcharging interexchange carriers for interstate and intrastate exchange access service for some time and about whether South Slope has inappropriately received universal service funds for its CLEC operations.

Given South Slope's May 2004 admissions regarding universal service reporting errors pertaining to its CLEC operations,<sup>29</sup> its May 2004 admissions regarding interstate access charges,

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<sup>28</sup> South Slope's Iowa Counsel admitted the memorandum into the record of an Iowa Board proceeding in *Deregulation of Local Exchange Services in Competitive Markets*, Docket No. INU-04-1 (Iowa Utils. Bd.), tr. 1508 (Ex. 302)(Aug. 26, 2004). Iowa Telecom has reproduced the official transcript pages containing the memorandum and included them as Attachment C. At the same hearing, South Slope admitted that if it were to compete against Iowa Telecom as a CLEC as opposed to as an ILEC, it would be at a distinct disadvantage due to, among other things, the access charge rates that it could lawfully impose as a CLEC, as opposed to as an ILEC. *Id.* at tr. 1509 (Aug. 30, 2004).

<sup>29</sup> See South Slope Cooperative Telephone Company, Petition for Waiver of Deadline in 47 C.F.R. Section 54.307(c), CC Docket No. 96-45 (filed May 28, 2004). The Commission denied this petition without analysis of the underlying errors on September 3, 2004 in *South Slope Cooperative Telephone Company Petition for Waiver of Deadline in 47 C.F.R. Section 54.307(c)*, Order, CC Docket No. 96-45, DA 04-2878 (rel. Sept. 3, 2004).

and the need for accurate and correctly attributed line counts in this proceeding (for the purpose of determining the extent to which South Slope may have “substantially replaced” Iowa Telecom), the Commission should demand a detailed accounting and reconciliation of South Slope’s universal service and interstate interexchange access reporting for both its CLEC and ILEC operations for the past five years.

**II. THE COMMISSION SHOULD DEFER CONSIDERATION OF THE SOUTH SLOPE PETITION UNTIL IT RESOLVES A NUMBER OF FUNDAMENTAL MATTERS REGARDING SECTION 251(H)(2).**

The Petition involves two circumstances that the Commission has yet to consider in the context of a petition under Section 251(h)(2). The first is that the Petition was filed by a CLEC deliberately seeking to be classified as an ILEC. The second is that the territory in which the petitioning CLEC operates is already served by a carrier which meets the statutory definition of ILEC remain novel questions for the Commission.

In a comparable Section 251(h)(2) proceeding involving CLEC substitution, the Commission has delayed issuing a decision until it can resolve the numerous issues raised by such a circumstance.<sup>30</sup> In response to a writ of mandamus (ordering the Commission to act) filed by the CLEC, Mid-Rivers Telephone Cooperative (“Mid Rivers”), to the U.S. Court of Appeals for the District of Columbia Circuit, the Commission has stated that there may be no apparent benefit to the applicant carrier,<sup>31</sup> further calling into question the degree to which regulators, carriers, and the public agree on the implications of granting such a petition. In the same brief, the Commission also stated that it is rational to defer decision making on applications such as

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<sup>30</sup> Opposition of the Federal Communications Commission at 9-13, In re Mid-Rivers Tel. Coop., No. 04-1163, (filed Aug. 11, 2004, D.C. Cir.)(“*Mid-Rivers Brief*”).

<sup>31</sup> *Id.* at 11.



those of Mid Rivers and, and by logical inference, South Slope until conclusion of a proceeding of general applicability considering the full implications of granting such petitions.<sup>32</sup>

Iowa Telecom has acknowledged the policy implications of Section 251(h)(2) requests in the past. In 2001, Iowa Telecom filed a petition under Section 251(h)(2) for a competitor in the Iowa exchange of Lost Nation to be classified as an ILEC and, simultaneously, for Iowa Telecom to be regulated as a CLEC.<sup>33</sup> Iowa Telecom withdrew its petition, however, citing the very types of regulatory uncertainty that have been raised by the Commission in the *Mid-Rivers Brief* with respect to the obligations of ILECs and rights of CLECs.<sup>34</sup>

**A. Status of the Original ILEC**

A logical implication of a finding that Iowa Telecom has been “substantially replaced” by South Slope in the Three Exchanges would be that Iowa Telecom should be regulated merely as a CLEC in those areas. Because Section 251(h) provides no specific procedure for having an incumbent classification removed, the Commission presumably would have to use its forbearance authority under Section 10 to achieve this result. While Iowa Telecom questions South Slope’s motivations, both stated and unstated, for pursuing the Petition, Iowa Telecom’s interest in opposing it, or at least in seeking delay of its consideration, are obvious – a desire to receive clear guidance regarding its own obligations following any grant of the Petition.

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<sup>32</sup> *FCC Mid-Rivers Brief*.

<sup>33</sup> See Iowa Telecommunications Services, Inc., Application For Order Pursuant to Section 251(h)(2) of the Communications Act of 1934, As Amended, Deeming Lost Nation-Elwood Telephone Company to be an Incumbent Local Exchange Carrier, CC Docket No. 01-139 (filed June 18, 2002).

<sup>34</sup> Iowa Telecommunications Services, Inc., Application For Order Pursuant to Section 251(h)(2) of the Communications Act of 1934, as Amended, Deeming Lost Nation-Elwood Telephone Company to be an Incumbent Local Exchange Carrier, Iowa Telecommunications Services, Inc. Motion to Withdraw, CC Docket No. 01-139 (filed Sept. 13, 2002), approved by the Commission by Iowa Telecommunications Services, Inc., Application For Order Pursuant to Section 251(h)(2) of the Communications Act of 1934, as Amended, Deeming Lost Nation-Elwood Telephone Company to be an Incumbent Local Exchange Carrier, Order, 17 FCC Rcd 19578 (2002).

**B. Definition of Study Areas**

As discussed above, the purported public interest benefits of the Application rest on incorporation of the Three Exchanges into South Slope's study area. If Iowa Telecom were to remain an ILEC, even for what may be intended as a short period of time, a question arises as to whether the Commission would permit there to be overlapping study area boundaries (which presumably could be allowed by the same waiver process that permits the shifting of a study area boundary).

If the Commission were to permit overlapping study areas, Iowa Telecom and South Slope would be competing for the same customers in the Three Exchanges based on vastly different levels of universal service support. While Iowa Telecom continues to believe that competitive eligible telecommunications carrier ("CETC") support should be based on the CETC's costs, Iowa Telecom believes that the unjust enrichment that South Slope would receive through receiving USF funds that far exceed what are demonstrably sufficient at present raises serious equitable issues that would distort competition. Similar questions arise with respect to interstate access charges. To the extent there are overlapping study areas, Iowa Telecom would be forced unfairly to compete with South Slope on the basis of significantly lower interstate and intrastate access charges.

**C. Carrier of Last Resort Obligations**

South Slope has yet to explain how it intends to meet any carrier of last resort obligations throughout the Three Exchanges as it has yet to build a network to the entire geographic area. If Iowa Telecom is granted CLEC status as part of or as a result of any grant of the Petition, South Slope will no longer have the option of purchasing unbundled Iowa Telecom loops to reach

customer premises. At the same time, however, it would be inequitable to maintain Section 251(c) obligations on a carrier with a relatively small market share in an exchange, such as Iowa Telecom. South Slope does not address these issues in the Petition.

**D. Dominant/Non-Dominant Status Under Federal Regulation**

A carrier's status under Section 251(h) does not necessarily settle its classification under the Commission's dominant/non-dominant dichotomy, although it would certainly be instructive should a formal proceeding regarding the matter be initiated. The term "dominant carrier" is defined in Section 61.3(q) of the Commission's rules to mean a "carrier found by the Commission to have market power (*i.e.*, power to control prices)."<sup>35</sup> It is certainly logically possible for a carrier not to have been substantially replaced by a CLEC, but, at the same time, be unable to control prices. Further, and perhaps most significantly, a classification as a carrier as "dominant" or "non-dominant" requires a finding separate from a finding under Section 251(h)(2) or a Section 10 forbearance finding with regard to a Section 251(h)(1) ILEC's Section 251(c) obligations.

The dominant/non-dominant classification is critical to compliance with a variety of Commission requirements, particularly those pertaining to tariffing and the related interstate interexchange access charge regime.<sup>36</sup> Circumstances in which a carrier can be incumbent but not dominant or dominant but not incumbent, even if they are intended only to be temporary, could create significant market distortions. The Commission must evaluate what it intends to be the effect of a decision under Section 251(h)(2) in this regard with respect to the potentially new ILEC and preexisting ILEC.

---

<sup>35</sup> 47 C.F.R. § 61.3(q).

<sup>36</sup> *See, e.g.*, 47 C.F.R. § 61.31.

**E. Implications for State Regulation**

As discussed above, the Iowa Board's rules require a specific procedure to be undertaken to make South Slope the effective ILEC in the areas currently known as the Oxford, Solon, and Tiffin Exchanges – a procedure that the Iowa Board has yet to undertake. Because Iowa statute includes significant independent provisions regarding the market-opening obligations of ILECs,<sup>37</sup> the Commission would be fully justified in not relieving Iowa Telecom of its federal ILEC obligations until its regulatory partner, the Iowa Board, had decided similarly. The Commission therefore should not act on the Petition until it has had the opportunity to work in conjunction with the Iowa Board to arrive at a comprehensive understanding of the regulatory status of both South Slope and Iowa Telecom in the Three Exchanges following any grant of the Petition.

**CONCLUSION**

South Slope's Petition raises a number of important policy issues for similarly situated CLECs and ILECs. Iowa Telecom urges the Commission to delay any decision on the South Slope Petition until it can resolve the matters discussed herein, as well as those raised in, for example, the *Mid-Rivers Petition*.<sup>38</sup> Further, as discussed above, Iowa Telecom suggests that the Commission thoroughly investigate the veracity and thoroughness of South Slope's representations regarding its interest in this proceeding and its conformance with relevant federal statutes and regulations regarding interexchange access charges and universal service funding.

---

<sup>37</sup> See, e.g., 199 IAC Ch. 38.

<sup>38</sup> Petition of Mid-Rivers Telephone Cooperative to be Declared an ILEC Pursuant to Section 251(h)(2) of the Communications Act, WC Docket No. 02-78.

Respectfully submitted,

**IOWA TELECOMMUNICATIONS  
SERVICES, INC. D/B/A IOWA TELECOM**

By: /s/ Donald G. Henry  
Donald G. Henry  
Edward B. Krachmer

115 S. Second Avenue West  
P.O. Box 1046  
Newton, Iowa 50208  
(641) 787-2000

Dated: October 4, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 4<sup>th</sup> day of October 2004, I caused copies of the foregoing Opposition to South Slope Cooperative Telephone Company, Inc.'s Petition For Order Declaring South Slope Incumbent Local Exchange Carrier In Iowa Exchanges Of Oxford, Tiffin, and Solon to be served on the following parties by electronic mail or overnight courier.

/s/ Edward B. Krachmer  
Edward B. Krachmer

Janice M. Myles\*  
Competition Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 Twelfth St., S.W.  
Washington, DC 20554

Best Copy and Printing, Inc.\*  
445 Twelfth St., S.W.  
Room CY-B402  
Washington, DC 20554

Benjamin H. Dickens, Jr.  
Blooston, Mordkofsky, Dickens, Duffy & Prendergast  
2120 L St., N.W.  
Washington, DC 20037

\* Served by electronic mail

**ATTACHMENT A**

199 IAC 22.20(2) – Procedures to revise maps and modify certificates. All territory in the state shall be served by a local exchange utility and inappropriate overlaps of service territories are to be avoided.

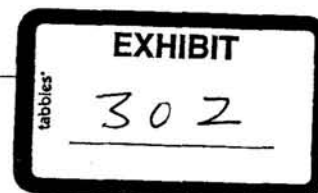
- a. When the board, after informal investigation, determines a significant gap or overlap exists on the maps on file defining service territories, affected utilities and interested persons, including affected customers, will be notified. The board will direct the affected utilities to file a proposed boundary within 30 days, if the utilities can agree.
- b. The boundary filing must include the name of each affected customer and justification for the proposed boundary, including a detailed statement of why the proposal is in the public interest. Prior to filing with the board, the serving utilities must notify interested persons of a convenient location where they can view the current and proposed maps, or copies of the maps covering their location must be mailed to them. The notice shall state the nature of the boundary filing and that any objections must be mailed to the board postmarked within 14 days of the mailing of the notice by the utility. The utility's filing shall also include a copy of the notice and the date on which the notice was mailed to customers.
- c. Upon board approval of the proposed boundary, the affected utilities shall file revised maps which comply with subrule 22.20(3) and, upon approval of the maps, the board will modify the certificates.
- d. If the utilities cannot agree on the boundary, or if an interested person timely mails material objections to the proposed boundary, the board will resolve the issues in contested case proceedings to revise the maps and modify the certificates after notice of the proceedings to all affected utilities and interested persons.
- e. A voluntary modification petition filed jointly by all affected utilities pursuant to 1992 Iowa Acts, Senate File 511, shall contain the information required in 22.20(2)“b.” The notice and hearing requirements in 22.20(2)“b” through “d” shall be observed in voluntary modification proceedings.
- f. A post-January 1, 1992, map will not be effective in defining a utility's service territory until approved by the board.

**ATTACHMENT B**

Letter From Benjamin H. Dickens, Jr., Blooston, Mordkofsky, Dickens, Duffy & Prendergrast  
(On Behalf Of South Slope Cooperative Telephone Company), To Jim Larsen, Iowa Telecom  
(November 20, 2001)



**From:** David Porter  
**To:** Don Lee  
**Cc:** jr@southslope.com; mmayutilitylaw@earthlink.net  
**Date:** 5/4/2004 6:41:21 PM  
**Subject:** RE: South Slope letter of April 15

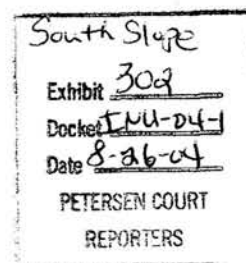


Don,

Thank you. I think these answers are clear. I will confer with counsel and get back to you promptly.

Dave

David N. Porter  
Director - External Affairs  
Iowa Telecom  
115 South 2nd Ave. West  
Newton, IA 50208  
641-787-2928 (Tel)  
641-787-2347 (Fax)



-----Original Message-----

**From:** Don Lee [mailto:DonLee@Martin-Group.com]  
**Sent:** Tuesday, May 04, 2004 3:11 PM  
**To:** David Porter  
**Cc:** jr@southslope.com; mmayutilitylaw@earthlink.net  
**Subject:** South Slope letter of April 15

David, per our earlier discussion, attached is the South Slope response to your questions. Following your review, please contact me so that we can proceed. Thanks much.

<<South Slope - IT letter response 5-4-04.doc>>

Don Lee  
Martin Group  
16712 206th Circle  
Hutchinson, MN 55350  
Phone 320-587-8582  
donlee@martin-group.com  
Cell # 605-999-2702

Mr. David Porter  
Director, External Affairs  
Iowa Telecom  
115 Second Avenue West  
PO Box 1046  
Newton, Iowa 50208-1046

May 4, 2004

Dear David:

This memo is to reply to your letter of April 15, 2004, in which you ask that we respond to several specific questions. These questions primarily confirm the conversation, which we had a few days earlier.

Question 1. Whether, or not, South Slope has been classified as an Eligible Telecommunications Carrier by the Board pursuant to Section 214 (e) of the Act for the geographic area encompassed by Iowa Telecom's Oxford, Solon and Tiffin exchanges:

Answer; Yes

Question 2. Whether, or not, South Slope is now or previously has claimed USF funds from any federal source for lines it provides or leases to serve its customers located in the same geographic area as is served by Iowa Telecom in its Oxford, Solon and Tiffin rate centers beyond those funds that may be claimed by South Slope as an ETC;

Answer; No

Question 3. Whether, or not, South Slope has imposed access charges on both its customers and other carriers pursuant to the state and federal rules that have applied to CLEC's during the period since South Slope began serving customers in Iowa Telecom's Oxford, Solon and Tiffin exchanges to today;

Answer; No

Question 4. Whether, or not, South Slope provides dialing parity for all calls to Iowa Telecom customers:

Answer; Yes

Question 5. Whether, or not, South Slope is willing to reassign the NXXs it received to serve its customers in Iowa Telecom's Oxford, Solon and Tiffin exchanges to these rates centers and to begin interim or permanent number portability with Iowa Telecom:

Answer; The NXXs referenced above are assigned to the North Liberty switch and serve the geographic area assigned to South Slopes North Liberty exchange. We are not in a position to reassign and do not intend to reassign them. We are however willing to provide permanent number portability to Iowa Telecom.

Question 6. Whether or not South Slope will permit Iowa Telecom to resell South Slopes services in the Oxford, Solon and Tiffin exchanges; and

Answer; Yes, consistent with applicable federal law.

Question 7. Whether, or not, South Slope will provide access to its right-of-way with in the Oxford, Solon and Tiffin exchange areas for Iowa Telecom's use, if requested.

Answer. Yes, consistent with federal, state, and especially, local jurisdictional laws and rules.

In short, we feel that the service being requested by Iowa Telecom can be accommodated.

Please advise our next step.

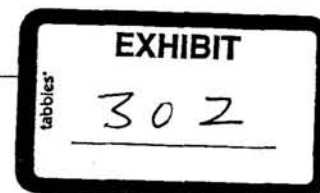
Sincerely:

Don Lee  
Martin Group  
16712 206th Circle  
Hutchinson, MN 55350  
donlee@martin-group.com  
phone 320-587-8582

**ATTACHMENT C**

***Deregulation of Local Exchange Services in Competitive Markets,  
Docket No. INU-04-1 (Iowa Utils. Bd.), South Slope Ex. 302***

**From:** David Porter  
**To:** Don Lee  
**Cc:** jr@southslope.com; mmayutilitylaw@earthlink.net  
**Date:** 5/4/2004 6:41:21 PM  
**Subject:** RE: South Slope letter of April 15

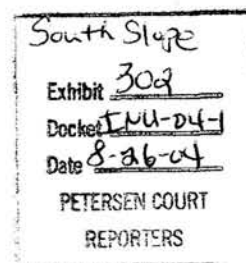


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641-787-2347 (Fax)



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